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MAY 27 1997

Federal Communications Commission
Office of Secretary

May 27, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: CC Docket No. 93-193, Bell Atlantic 1997 TRP Revisions,
CC Docket No. 94-65, Pacific Bell 1997 TRP Revisions

On behalf of Pacific Bell, please find enclosed an original and six copies of its "Reply" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me at (202) 383-6429 should you have any questions or require additional information concerning this matter.

Sincerely,

Enclosure

cc: Patrick Donovan
Kathy Franco
John Scott

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 27 1997

Federal Communications Commission
Office of Secretary

In the Matter of

Bell Atlantic 1997 TRP Revisions

CC Docket No. 93-193

Pacific Bell 1997 TRP Revisions

CC Docket No. 94-65

REPLY OF PACIFIC BELL

The Commission's Rules require carriers to return to their customers 50% of their earnings over a specified amount. No one has questioned that Pacific Bell did exactly that. Now, however, under the guise of the Commission's recent Memorandum Opinion and Order ("the Order"),¹ AT&T and MCI are trying to line their pockets, at Pacific's expense, by arguing that the exogenous changes put forward by Pacific in its May 8, 1997 TRP are inappropriate. These carriers do not, and cannot, argue that Pacific shared an inappropriate amount for the 1994-1996 filing years. The rules require 50% sharing, and 50% sharing is what was calculated and implemented for those years. AT&T and MCI instead try to argue that Pacific should make a downward exogenous adjustment only. The effect of such an adjustment will be to increase

¹ 1993-1996 Annual Access Filings, CC Docket 93-193, Memorandum Opinion and Order, released April 17, 1997.

Pacific's sharing liability for the years in question, and give AT&T, MCI and other customers of Pacific a windfall to which they are not entitled.

MCI and AT&T are wrong when they claim that Pacific improperly calculated the refund liability imposed in the Order for the sharing reallocation in 1994, 1995 and 1996.² Generally both AT&T and MCI take issue with Pacific's inclusion of a one year upward exogenous adjustment in Traffic Sensitive and Trunking baskets in addition to the one year downward exogenous adjustment calculated in the common line basket. Yet, in their original submission on the annual filings at issue, AT&T called for revenue-neutral upward and downward price cap indices ("PCI") adjustments by Pacific Bell.³ As we illustrate below, the upward adjustments are necessary in order to comply with existing price cap rules regarding sharing and are not precluded by the Order.

AT&T states the Commission directed Pacific Bell "to follow a specific two-prong methodology to correct their PCI's and other pricing limits and to calculate their refund liability."⁴ In paragraph 97 of the Order, the Commission "provided instructions for the price cap LECs needing to correct their PCIs and other pricing limits on a going-forward basis so that those PCIs are what would have been in place had they been calculated consistent with the Commission rules and decisions. Recalculations are to be made for the price cap index in each basket..." Pacific Bell correctly followed the Commission's instructions to reallocate the sharing

² AT&T goes on to suggest that the questions are raised "which, at a minimum, will warrant suspension and investigation of the access tariffs which they will file in June 1997." Obviously, the Commission cannot take action with respect to a filing which has not yet occurred.

³ See, for example, Petition of AT&T Corp., filed April 26, 1994, Appendix C.

⁴ AT&T at 3.

obligation to all baskets, beginning with the 1994 Annual Filing, so that the resulting revised PCIs in effect as of June 30, 1997 "are what would have been in place had they been calculated consistent with the Commissions [sic] rules and decisions."⁵ Neither AT&T nor MCI has disputed this fact.

The Commission went on in the Order to require refunds to be calculated by a one time exogenous cost adjustment.⁶ Paragraphs 104 and 105 provide the methodology for calculating refund liabilities resulting from overcharges caused by the sharing misallocation. Pacific Bell has properly determined this liability for the Common Line basket and has computed the one year negative exogenous cost adjustment to be incorporated into the annual access tariff filing to be effective July 1, 1997. However, an additional adjustment is required in order to comport with the price cap rules. An equal positive exogenous cost adjustment is necessary to adjust the Traffic Sensitive and Trunking basket PCI's to correct for the over-allocation of sharing to these two baskets. If the Commission were to find otherwise, Pacific Bell would be forced to share more than the amount required by the Commission's rules.

In the course of the annual filings in which Pacific calculated sharing in the manner the FCC has now found to be improper, neither the Commission nor petitioners ever disputed the amount of sharing. Rather, it was the allocation of sharing among the baskets that was subject to investigation.⁷ Price cap rules prescribe a 50-50 sharing zone when LECs earn between 12.25%

⁵ Order ¶97.

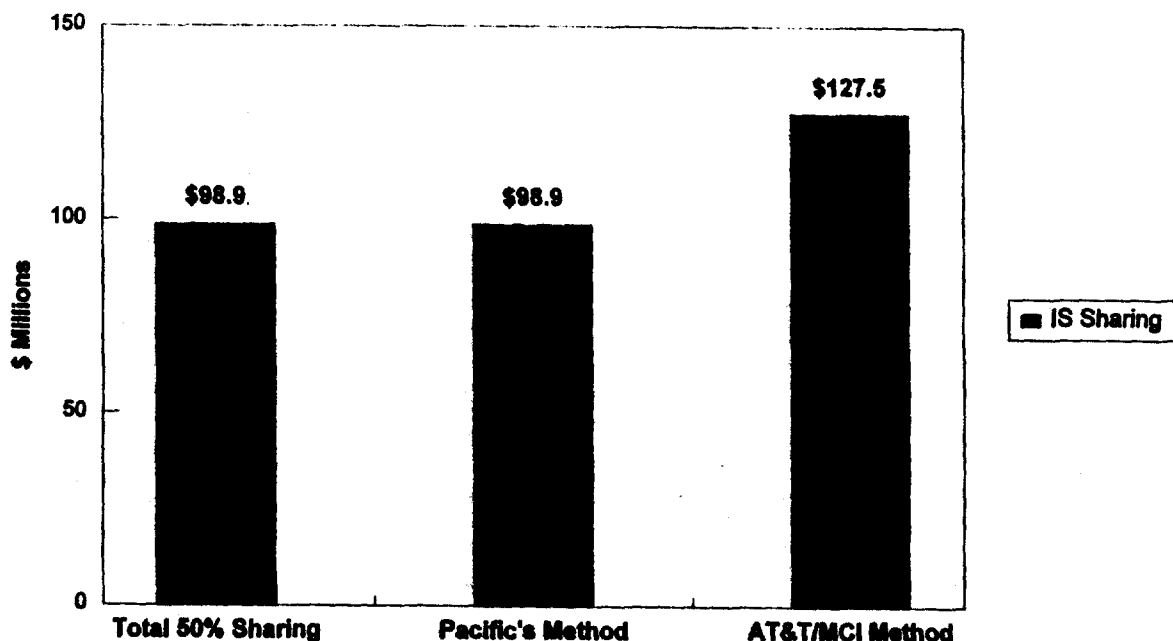
⁶ Order ¶104-106.

⁷ See 1994 Annual Access Tariff Filing, CC Docket 94-65, Memorandum Opinion and Order Suspending Rates, (1994) ¶11.

and 16.25%.⁸ Those rules therefore require a prescribed 50% sharing amount. The Price Cap Order and rules do not prescribe a deviation from that amount for any reason.

If Pacific Bell were required to include only the negative adjustment to the Common Line basket and ignore the corresponding upward adjustments to the other baskets, the effect would be not to correct the sharing misallocation, *but to distort it even further*. Pacific Bell would then be sharing more than 50% for the time periods in issue. Our calculations show that if AT&T and MCI prevail on this issue, Pacific would be forced to share over 64% of its earnings during the affected time periods; nearly 30% more than what the rules require.⁹ *Pacific Bell's total sharing obligation is not and has never been in question; it is only the method used to allocate the obligation to the baskets that is at issue.*

AT&T & MCI Insist Pacific Share More Than The 50% Limit



⁸ Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990) ("Price Cap Order"); 47 C.F.R. 61.45(d)(2).

⁹ See Appendix A attached for these calculations.

Customers are not harmed by these offsetting upward adjustments to these indices. Allowing Pacific Bell to include the corresponding upward exogenous adjustments to the Switching and Trunking baskets will not overly advantage or disadvantage any particular customers. Precluding these offsetting PCI adjustments would result in the Commission giving an undue windfall for access customers.

Conversely, Pacific Bell would be significantly and erroneously harmed if only the Common Line basket indices are permitted to be changed. The delay in the Commission's decisionmaking on this issue has created the potential for this harm. Had the Commission resolved this issue in a timely fashion there would have been no revenue impact either for Pacific Bell or its IXC customers. In fact, permitting these adjustments is the only method consistent with price cap rules.

Pacific's methodology looks at the actual PCIs in each basket and compares that with the PCIs that should have been in place had we calculated our sharing adjustment as required in the Order. As William Taylor explains in his affidavit (page 10) attached to Bell Atlantic's Petition for Clarification filed May 19, 1997:

The result of that calculation can be positive or negative in any basket, and in aggregate, customers of interstate services were not overcharged at all. The correct amount of earnings sharing adjustment was calculated and returned to customers through reductions in the PCIs, SBIs and CCL rates over all four baskets in every year. If the allocation had been done in accordance with the 1993-96 Access Tariff Order, the allocation across baskets would have been different in each year, but the total amount returned to customers would have remained the same as was actually returned to customers in each year.

Thus, AT&T and MCI's concerns are unfounded.¹⁰ No party disputed that PCIs should be trued up to "what would have been in place had they been calculated consistent with the Commission's rules and decisions."¹¹ An adjustment across all baskets is the only way to reallocate sharing dollars while recognizing that the amount of sharing was proper. Similarly, an exogenous decrease in the Common Line basket must necessarily be accompanied by upward adjustments in the other baskets or the effect is to require greater than 50% sharing. The Commission lacks authority to burden a LEC with an obligation greater than its rules permit.

In conclusion, the Commission should disregard the comments of AT&T and MCI that they should somehow get a windfall as a result of the Commission recent Order. As we have shown, the only equitable way to correct the misallocation, and the only way permitted by the Commission's rules, is to adjust all baskets so that the sharing misallocation can be corrected.

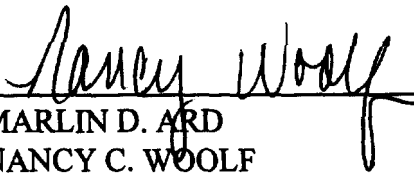
¹⁰ Contrary to statements made by MCI, no "retroactive rate increases" are proposed. (MCI, p 7) Instead, we are making temporary prospective PCI adjustments to reflect that appropriate levels of sharing occurred during 1994-96.

¹¹ Order ¶97.

Otherwise, Pacific would be forced to share more than the required amounts during the years in question.

Respectfully submitted,

PACIFIC BELL


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Date: May 27, 1997

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APPENDIX A

Pacific Bell

Impact of Partial Correction by Redistributing Sharing to Common Line Basket Only
(Dollars)

| Ln | Item | Source | Amount Shared in 1994 Access Tariff (A) | Amount Shared in 1995 Access Tariff (B) | Amount Shared in 1996 Access Tariff (C) | Total All Filings (D=A+B+C) |
|----|---|----------------------------------|--|--|--|--------------------------------------|
| 1 | Total 50% Tariff Sharing | Amended 1997 TRP, WP I, II & III | 9,874,296 | 70,443,074 | 18,636,402 | 98,953,772 |
| 2 | Impact of Sharing Redistribution on Common Line | Amended 1997 TRP, WP V.A | 2,007,766 | 20,113,874 | 6,440,952 | 28,562,592 |
| 3 | Adjusted Sharing with Redistribution to Common Line Basket Only | Ln 1 + Ln 2 | 11,882,062 | 90,556,948 | 25,077,354 | 127,516,364 |
| 4 | Percent Increase in Sharing with Redistribution to CL Basket Only | (Ln 3 - Ln 1) / Ln 1 | 20.33% | 28.55% | 34.56% | 28.86% |
| 5 | Effective Sharing on Earnings above 12.25% (The proportion of earnings above 12.25% that would effectively be shared if sharing redistribution is applied to Common Line Basket only.) | Ln 3 / (Ln 1 * 2) | 60.17% | 64.28% | 67.28% | 64.43% |

Certificate of Service

I, Cheryl A. Peters, do hereby certify that a copy of the attached "Reply of Pacific Bell in CC Docket Nos. 93-193 and 94-65" were sent via first class mail, postage prepaid, to the following on May 27, 1997.

A handwritten signature in black ink, appearing to read 'Cheryl A. Peters', with a stylized flourish at the end.

Cheryl A. Peters

**Mr. Alan Buzacott
MCI Telecommunications Corporation
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**Ms. Judy Sello
AT&T Corporation
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